

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: CYNTHIA A. HOLLOWAY
NO.: 00-143

Florida Supreme Court
Case No.: SC00-2226

**JUDICIAL QUALIFICATIONS COMMISSION'S MOTION TO COMPEL &
MOTION FOR SANCTIONS**

COMES NOW the Florida Judicial Qualifications Commission (hereinafter referred to as the JQC), by and through the undersigned Special Counsel, and hereby files its Motion to Compel a Second Deposition of Judge Holloway, production of Judge Holloway's office telephone message pads, and Motion for Sanctions, and as grounds states as follows:

1. The JQC deposed Judge Holloway in Tampa on May 8, 2001. During said deposition the undersigned Special Counsel was precluded from asking questions pertaining to the incident in Judge Katherine Essrig's chambers and the incident regarding the issuance of the injunction in front of Ms. Jeanne Tate's law firm as Judge Holloway had not formally been charged with same. Opposing counsel advised they would be seeking a protective order if we continued to inquire into these areas. As a courtesy and to avoid unnecessary delay, the undersigned agreed not to inquire into these areas and preserved the JQC's right to depose Judge Holloway at a later date. (Judge Holloway's deposition dated May 8, 2001, pp. 146-152.)

2. On August 28, 2001 the undersigned wrote a letter to Mr. Scott Tozian and Mr. Michael Rywant seeking mutually convenient dates for the taking of Judge Holloway's second deposition on the "limited grounds concerning the amended

allegations.” (Exhibit 1) Opposing counsel verbally advised they would be seeking a protective order precluding our taking of Judge Holloway’s second deposition.

3. Not having heard from opposing counsel, the undersigned wrote a second letter to Mr. Michael Rywant on September 6, 2001 inquiring whether or not they would be seeking a protective order to prevent said our taking of Judge Holloway’s deposition. (Exhibit 2)

4. Due to the Discovery deadline of September 17 and our failure to receive word from opposing counsel; the undersigned unilaterally scheduled Judge Holloway for deposition on Friday, September 14, 2001 (See Notice of deposition, Exhibit 3) and drafted a third letter to opposing counsel dated September 7, 2001 advising of same. (Exhibit 4)

5. Judge Holloway’s deposition did not take place on September 14, 2001 and to date we have not received a Motion for Protective order regarding same.

6. We are seeking a second deposition of Judge Holloway specifically to ask questions relating to the new charges which we were precluded from asking on May 8, 2001. “Nothing in the Florida Rules of Civil Procedure forbids a second discovery deposition. Florida Rules of Civil Procedure 1.280(c) allows a court, for good cause shown, to protect a party from discovery that would cause ‘annoyance, embarrassment, oppression, or undue burden or expense...’” *Medina v. Yoder Auto Sales, Inc.*, 743 So.2d 621 (Fla. 2d DCA 1999). Judge Holloway’s second deposition will be held in Tampa and will be limited to two areas of inquiry concerning the

newly amended charges which were not covered during her first deposition.

7. Finally, Judge Holloway's Judicial Assistant Janice Wingate testified during her deposition of May 8, 2001 that she keeps Judge Holloway's used telephone message pads in a cabinet in Judge Holloway's office. On September 10, 2001, the undersigned requested copies of the message pads dating from 1997 to the present and respectfully requests this court order opposing counsel to produce same on or before September 21, 2001. (Exhibit 5)

For the foregoing reasons, the JQC respectfully requests this Court compel Judge Holloway to appear for deposition and produce copies of her telephone message pads. In addition, the JQC requests that the Court order whatever sanctions the Court deems warranted under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery on: Scott K. Tozian, Esquire, SMITH & TOZIAN, P.A., 109 North Brush Street, Suite 150, Tampa, Florida 33602; Michael S. Rywant, Esquire, RYWANT, ALVAREZ, JONES, RUSSO & GUYTON, P.A., 109 North Brush Street, Suite 500, Tampa, Florida 33602; and the Honorable James R. Jorgenson, Chair, Hearing Panel, Third District Court of Appeals, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; and by U.S. Mail on: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 Duval Street, Tallahassee, Florida 32399-1927; John

Beranek, Esquire, AUSLEY & MCMULLEN, Washington Square Building, 227 Calhoun Street, P.O. Box 391, Tallahassee, Florida 32302; Honorable James R. Wolf, Chairman, Investigative Panel, 301 S. Martin Luther King Blvd., Tallahassee, Florida 32399; and Brooke Kennerly, Executive Director, Judicial Qualifications Commission, Mount Vernon Square, 1110 Thomasville Road, Tallahassee, Florida 32303, this _____ day of September, 2001.

CERTIFICATE OF FONT SIZE

I hereby certify that type font used in this document is 14-point Times New Roman.

FERRELL SCHULTZ CARTER
ZUMPARO & FERTEL, P.A.
34th Floor, Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131
Telephone: 305 371-8585
Facsimile: 305 371-5732

By: _____
BEATRICE A. BUTCHKO
Special Counsel for the
Judicial Qualifications Commission
Florida Bar No. 0817163